

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 9178	DATE	2/26/2003
CASE TITLE	Latroy Hubbard vs. Certified Grocers Midwest, Inc.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Order. Answer ¶19 is stricken, but with leave granted to replead. Both AD 1 and AD2 are stricken, but without prejudice to their being replaced by a proper identification of any problems with the scope or timing of Hubbard's action in relation to his EEOC charge. Any proposed amendment to Certified Grocers' responsive pleading to deal with the issues identified in this memorandum must be filed in this court's chambers on or before March 7, 2003.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

	No notices required, advised in open court.	<div style="transform: rotate(-45deg);"> U.S. DISTRICT COURT CLERK 03 FEB 27 PM 3:38 FILED-ED 10 </div>	number of notices		Document Number 3
	No notices required.		FEB 28 2003		
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		date docketed		
	Notified counsel by telephone.		Cpm	docketing deputy initials	
	Docketing to mail notices.		2/26/2003	date mailed notice	
	Mail AO 450 form.		SN		
	Copy to judge/magistrate judge.		mailing deputy initials		
SN		courtroom deputy's initials			

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED

FEB 28 2003

LATROY HUBBARD,)	
)	
Plaintiff,)	
)	
v.)	No. 02 C 9178
)	
CERTIFIED GROCERS MIDWEST, INC.,)	
)	
Defendant.)	

MEMORANDUM ORDER

Certified Grocers Midwest, Inc. ("Certified Grocers") has filed its Answer and Affirmative Defenses ("ADs") to the employment discrimination action brought against it by its ex-employee Latroy Hubbard. This memorandum order is issued sua sponte to address two flaws in that responsive pleading.

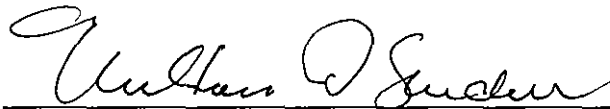
To begin with, Answer ¶19 does not conform to the disclaimer required by the second sentence of Fed. R. Civ. P. 8(b) to obtain the benefit of a deemed denial of the corresponding Complaint allegations. In that respect, see App.¶1 to State Farm Mut. Auto. Ins. Co. v. Riley, 199 F.R.D. 276, 279 (N.D. Ill. 2001). Answer ¶19 is therefore stricken, but with leave granted to replead.

If that had been the only problem with the response, this Court would not have troubled itself with the issuance of this memorandum order. But in this instance ADs 1 and 2 are problematic as well. Each begins "To the extent..." which is a sure tipoff to the fact that neither provides adequate notice (or

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indeed, any notice at all) of any deficiency in Hubbard's claim. As framed, each is purely tautological. Accordingly both AD 1 and AD 2 are stricken, but without prejudice to their being replaced by a proper identification of any problems with the scope or timing of Hubbard's action in relation to his EEOC charge.

Any proposed amendment to Certified Grocers' responsive pleading to deal with the issues identified in this memorandum order must be filed in this Court's chambers (with a copy of course being transmitted to Hubbard's counsel) on or before March 7, 2003. Absent such a timely filing, Complaint ¶19 will be deemed to have been admitted and ADs 1 and 2 will be deemed to have been withdrawn.

A handwritten signature in cursive script, appearing to read "Milton I. Shadur", is written over a horizontal line.

Milton I. Shadur
Senior United States District Judge

Date: February 26, 2003